P.R. No. 3686/06
Presented by Shri B.L. Gahra
dated 05/12/06

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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

S.A. 526 /2006

APPELLANT
PLAINTIFF

MOHAMMAD SIDDIQUI
S/O Hanif Mohammed
Aged about, 58 Yrs. Resident Of,
Nayapara, Balodabazar,
District Raipur. (C.G.)

VERSUS

RESPONDENTS
DEFENDENTS

1. **BUDHRAM S/O JANGARAM PANDEY** Aged About, 52 Yrs.
(Wrongly mentioned as 22 Yrs.)
R/O, Balodabazar, District, Raipur.

2. **STATE OF CHHATTISGARH**
Through Collector, Raipur. (C.G.)

RECEIVED-COPY
28/12/06
for R to A. G. BILASPUR

MEMO OF APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No 526 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04-01-2007

Shri Prakash Tiwari, learned counsel for the appellant.

Shri Akhil Agrawal, Panel Lawyer for the respondent No.2.

Heard on admission.

Brief facts are that the plaintiff/appellant filed a Civil Suit No.161-A/2002 in the Court of Civil Judge Class-I, Baloda Bazar for specific performance of contract as also for declaration of title and permanent injunction. It was pleaded that the respondent No.1 **Budhram** had entered into an agreement dated 09.08.1988 to sell the suit land bearing Khasara Number-265/2 Area measuring 0.275 Hectare @ Rs.22,500/- per acre. It was agreed that the sale deed would be executed after the harvesting of crops in the year-1988. An amount of Rs.2,000/- was paid as advance. However, thereafter the registry of the suit land was delayed by the respondent No.1/defendant on the pretext that the suit land was joint property and he would alienate the suit land only after partition was effected amongst the parties. In year-1989, the plaintiff again asked the defendant to execute the registered sale deed but the defendant again postponed the matter. A notice was sent vide Ex.P-2 almost after 13 years as late as on 20-11-2002 to the defendant and the Civil Suit was instituted on 21-11-2002. The learned Civil Judge Class-I, Baloda Bazar dismissed the suit on the ground that the plaintiff had failed to prove readiness and willingness to execute his part of the agreement and also on the ground that the suit was barred by limitation under Article-54 of the Limitation Act.

Aggrieved by the said judgment and decree, the plaintiff/appellant preferred Civil Appeal No.14-A/2006 before the Ist Additional District Judge, Baloda Bazar, District-Raipur which was also dismissed vide judgment and decree dated 25-09-2006 while affirming the finding

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबंध)

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recorded by the lower Court. Aggrieved, the appellant has preferred this Second Appeal.

Shri Prakash Tiwari, learned counsel for the appellant has admitted that in the plaint readiness and willingness on the part of the appellant / plaintiff to perform his part of the contract was not specifically pleaded.

It is settled law that grant of specific performance of contract is a discretionary relief and the plaintiff is required to plead and prove his readiness and willingness at all times. It is also not disputed that under Article-54 of the Limitation Act, the period of limitation of 3 years commences from the date fixed for the performance of the contract.

Both the Courts below have on a proper appreciation of facts come to the conclusion that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract and that the suit filed as late as on 21-11-2002 was clearly barred by limitation under Article-54 of the Limitation Act. I am of the considered opinion that the concurrent ~~was~~ finding of fact recorded by both the Courts below, is based on proper appreciation of evidence oral as well as documentary and no substantial question of law is involved in this Second Appeal. As a result, this Second Appeal is dismissed at the stage of admission.

In view of above, M.(C.)P.No.2220/2006 which is an application under Order-39 Rule-1 & 2 of C.P.C. also stands dismissed. As a consequence, I.A.No.4156/2006 for urgent hearing also stands disposed of. No order as to costs.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.